

UNITED STATES DISTRICT COURT FOR NEW JERSEY

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UNITED STATES

V.

MARIJAN CVJETICANIN

(Crim No. 14-cr-274 (MAS))

MOTION FOR BAIL PENDING APPEAL

PURSUANT TO 18 U.S.C. 3143(b)

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AFFIDAVIT OF THE MOVANT IN SUPPORT OF THE BAIL MOTION

I, Marijan Cvjeticanin, currently detained at Federal Correctional Institution in Danbury, Connecticut, in support of my Motion for Bail Pending Appeal, filed herewith with the United States District Court for New Jersey pursuant to the provisions set forth at 18 U.S.C. 3143(b), hereby depose and state:

THAT, I am 52 years of age, U.S. citizen, former resident of Saint James, Long Island, New York, married, father of two daughters;

THAT, I am a former immigration and international law attorney in New York with over twenty five (25) years of both domestic and international legal experience. I hold a European Law Degree, a U.S. Master's Degree in International Relations and International Economics from Johns Hopkins University, completed all necessary American legal coursework at the New York Law School and successfully passed the New York State Bar Exam. I was licensed in the State of New York, with a completely unblemished record of practice, and no disciplinary, or let alone a

criminal record, prior to the current mail fraud conviction in the Federal District Court for New Jersey (*case number as above Crim No. 14-cr-274 (MAS)*);

THAT, I continue to maintain my innocence and empathically claim that the Judgment of Conviction for mail fraud in this matter was procured, only and only, due to the combination of gross prosecutorial misconduct, false trial testimonies by the government's crown witness, namely blatant lies by my previous employer Steven Weinberg, Esq, a partner of Wildes & Weinberg in New York (please see **Exhibit A**). More detailed list of substantial issues of law and fact is provided in the Memorandum of Law enclosed with this Motion. The Judgment of Conviction issued in this matter is currently subject of an appeal to the U.S. Court of Appeals for the Third Circuit. Based on the newly discovered substantial exculpatory evidence and other legal reasons, I am also in the process of preparing new FRCP Rule 33 Motion and other post-conviction collateral attacks on the Judgment of Conviction;

THAT, pursuant to my arrest on the mail fraud charges on May 29, 2013, I was released on a pretrial bail, the terms of which certainly limited my freedom of movement & liberty interests, but were also quite easy, logical and self-explanatory. Whenever limits of my freedom of movement were involved regarding any necessary business trips, the Court's Pretrial Services always approved my travel outside New York/New Jersey areas, such as my business trips to Chicago, Illinois, and others. I always promptly returned to the jurisdiction of the Court and was present at, and eagerly attended, all Court hearings in my matter and I intend to continue to do so until fully exonerated;

THAT, during, and after, the arrest I fully cooperated with the Government and voluntarily provided both numerous business and legal documents and extensive personal statements to the Government. Strongly believing in, and fully maintaining my innocence, before even being informed of the true nature of the charges pending against me, I voluntarily provided over 3,000 pages of various legal, advertising, tax, banking, corporate and other documents to the

Government and fully cooperated with the Government in any other respect in this matter. This was also confirmed by the Government witnesses (agents) during their trial testimonies;

THAT, the Government's affidavit executed and submitted for the purposes of the issuance of the arrest warrant in my case by the Magistrate Judge in Newark, New Jersey, was false, one-sided, devoid of any (then existing) exculpatory evidence, highly selective and inconsistent with the statutory definition of a mail fraud, as well as full of substantial material omissions, which if were included, would have precluded any reasonably jurist from finding even a wrongdoing and let alone a probable cause for warrant issuance on that legal basis;

THAT, given the relatively easy terms of the initial pretrial bail, acting upon the advice of the Assistant Federal Public Defender in Newark, New Jersey, Ms. Karen Gillen, Esq, who simply, unannounced and uncalled for, showed up in the courtroom at the time when I was virtually in my pajamas brought for my initial arraignment to the District Court building in Newark, New Jersey, I agreed to waive my constitutional and statutory right to have a probable cause hearing regarding the arrest warrant and the underlying materially false affidavit which was used as a legal basis for my arrest. Ms. Gillen incorrectly advised me and provided ineffective assistance of counsel, in telling me that as a first time offender my penalty exposure to a mail fraud crime was between 0-6 months of imprisonment, or most probably just a sentence of probation, and even alluded that somehow there was a trade off between easier Pretrial bail conditions and the waiver of probable cause hearing in my matter. Since, I was not a specialist in Federal Criminal Procedure, and since the terms of the initial bail order appeared fairly liberal to me, I naively trusted Ms. Gillen's advice and waived my right to a probable cause hearing. Given the amount of exculpatory documentation I voluntarily provided to the Government on the day of my arrest (over 3,000 pages of legal, business, advertising, banking and other documents stored in at least 3 large plastic black and yellow containers, for which the Government never issued a receipt to me), I could have ended the process right there and had all the charges and the arrest warrant dismissed. Enclosed please find **Exhibit B** with Ms. Gillen's false and ineffective written advice to me on the day of my initial arraignment on mail fraud charges in Newark, New Jersey on May

29, 2013. During the initial arraignment the Government did not make any claim that I in any way represented a danger to the safety of others or to the community. As mentioned above, based on the federal charges filed against me, New York State Bar licensing authorities declined to proceed against me in any respect;

THAT, one year after the filing of the initial charges in May 2014, federal Grand Jury returned the indictment against me consisting solely of previous mail fraud charges, and I had a second arraignment in this matter, this time at Federal District Court in Trenton, New Jersey. At that time the Government once again did not claim that I was a danger to the safety of others, or to the community, except that they tried to limit my New York license to practice law, which was soundly rejected by the Magistrate Judge during the hearing. Once again, based now on indictment in this matter against me, New York State Bar licensing authorities declined to proceed against me in any respect;

THAT, my trial was held in June 2015, fully two (2) years after the arrest and the filing of the initial charges, and for the entire period of two (2) years between the arrest in May 2013 and the trial date in June 2015, I was out free on bail without a single incident or bail violation reported. While continuing to maintain my innocence, I was always treated the employees of the Court's Pretrial Services with courtesy and gladly and promptly responded to all of their questions and inquiries, provided required documentation regarding my trips, successfully cleared and past all unannounced (surprise) drug tests, and fully cooperated with Pretrial Services in any respect. Thanks to my full cooperation and in recognition of the fact that I obviously did not pose any danger to the safety of the others and to the community, in 2014, the Court's Pretrial Services reduced my mandatory in-office reporting from two times per month to only once per month.

THAT, despite the fact that the Government, and some private individuals connected to my previous employer, posted online and advertised some heavily defamatory, libelous, statements and documents against me, including postings on the first page of GOOGLE, which was seen, and could have been seen, by all of my previous, then current and potential clients, during the



entire period from the time of the arrest in May 2013 to the trial in June 2015, my license to practice law in the State of New York remained clean and without even a disciplinary record. Moreover, based on the case documentation which the Government provided to the New York State Bar licensing authorities, as well as my answer and reply, my disciplinary record remained clean even after the June 2015 conviction, as the Bar Association licensing authority in New York declined to proceed even with a minimal measure of temporary suspension against me (the so called immediate suspension which could have been imposed at the time when the initial charges were filed against me in May 2013). In this respect, enclosed please find **Exhibit C**, evidencing lack of any disciplinary record against me in February 2016, over 6 months after the conviction in this matter.

THAT, following the jury conviction in June 2015, U.S. District Court Judge Michael A. Shipp denied the request from the Government for my immediate remand to custody and amended the terms of my previous bail order by adding some additional restrictions on my movement and employment. Since the entire amount of loss that the government submitted and proved to the jury was less than \$29,000, I was under the impression that I was reasonable in my belief that I will have a quick and easy sentencing hearing, so I grudgingly accepted the terms of my new post-trial bail order ordered as amended by the Honorable Judge Shipp and did not file any interlocutory appeals or emergency motions from that decision to the Circuit Court;

THAT, unfortunately, due to the submission of the patently false affidavit and some additional documents by my previous employer Wildes & Weinberg for the purposes of the sentencing hearing (please see **Exhibit D** - a copy of the insurance fraud criminal complaint I filed against my previous employer in both New Jersey and New York), instead of a quick and easy hearing, federal District Court held no less than 3 separate sentencing hearings in this matter spanning from January 2016 to the end of March 2016, and it wasn't until April 5, 2016 that I was designated and supposed to self- surrender to my current federal correctional institution;

THAT, despite the fact that I, as a defendant, lived and worked exclusively in New York, had offices in New York, and if there was any crime committed it was committed only in New York (lex locus delicti), due to a combination of unconstitutional federal jurisdictional statutes regarding special mail fraud jurisdiction, and unproven mailings as a part of the mail fraud in this matter, which will all be addressed as substantial issues of law and fact below, both the prosecution and the place of trial took place in New Jersey. To make it even worse, while the initial charges were filed at the U.S. District Court in Newark, which is at least relatively close to and well connected to the New York's Penn Station, for the trial venue purposes I was dragged into the District Court's location in Trenton, NJ, which is closer to Pennsylvania than to New York, and is over 4 hours away from my residence on the north shore of Long Island, often driving through busy tunnel/bridge traffic in both New York and New Jersey. During the pretrial motions the defense objected to the venue, but the Court ruled in favor of the existing location in Trenton, NJ. Since the venue was unfortunately determined to be in New Jersey, it was a fairly logical step that my defense counsel was also located in New Jersey, more familiar with the courts and local court rules and procedures in New Jersey. However, this also created a significant logistical problem for me as a defendant, as my defense counsel's office is located in Verona, New Jersey (approximately East Central New Jersey), which depending on the bridge/tunnel traffic is also approximately 3-4 hours driving distance from my New York residence. Both the location of the court and the location of my attorney's office played important role in this matter, as further detailed below;

THAT, at the time of the commencement of the sentencing hearings in January 2016, I was still free on post trial bail, and at that point had been free on bail for over two and half years (over 30 months). I had no reported violations, incidents, or any bail related problems whatsoever. However, upon my innocent and very limited disclosure to the Court's Pretrial Services that over the next several months I would need more often to travel to New Jersey and meet with my attorney in her Verona, NJ office, Pretrial Services posture suddenly changed. I explained to them that all the travels are solely for the purposes of the preparations for my sentencing hearings, and also due to the fact that I discovered some critically important evidence

documenting the motive for my previous employer's false trial testimony, but while they did approve the trips, the posture of the Court's Pretrial Services changed. The change in their mood and posture was particularly dramatic when I also disclosed to them that I intended to file a Motion for Bail Pending Appeal, which would basically allow me to remain free on bail for at least another twelve (12) months. At that point, in January 2016, despite the fact that I had no single bail violation or problem for over two years, the employees of the Court's Pretrial Services tried absolutely every trick in the book in order to artificially produce, "force" or insinuate some problems or violations regarding my behavior or actions while free on bail;

THAT, the despicable, disgusting, unethical, wrongful, immoral, illegal, unlawful, criminal and unconstitutional behavior of the employees of the Court's Pretrial Services against me in this matter is described in more detail in the Criminal Complaint which I filed against them with the Director of the Federal Bureau of Investigations (FBI) and the Office of the Inspector General of the U.S. Department of Justice both in Washington, DC, so there is no need to repeat in detail all of their overt acts and deliberate omissions (please see **Exhibit E**). However, for the purposes of this Affidavit, I will only remind the Honorable Court that, as stated above, prior to just few months before my designated self surrender date I was out free on bail for over two and half years with absolutely no violations, that I obviously was not considered a risk of flight, danger to the community, or to the safety of others as in 2014 I was granted by the Court's Pretrial Services very liberal only once per month in-office reporting requirement, my license to practice law remained completely clean and during the time on bail I was neither charged with, nor committed, any other crimes or criminal violations. As stated above, as for the developments shortly prior to my designated self-surrender date and the revocation of my previous bail, the employees of the Court's Pretrial Services in the submission of their affidavits, and in their other actions, clearly violated numerous provisions of the federal criminal statutes, among others prohibition against making false statements, perjury, obstruction of justice, etc. In this respect, as much as I would welcome the opportunity to have a hearing and for the Honorable Court to further investigate this matter, I urge the Honorable Court to disregard these events when deciding over the current Motion for Bail Pending Appeal, and look into the totality of record

and circumstances of my actions and behavior while out on bail since my arrest and the initial arraignment in May 2013.

THAT, in addition to previous lack of violations, since I have been incarcerated by the U.S. Bureau of Prisons since March 23, 2016, I have had no incident reports or any possible problems with the U.S. Bureau of Prisons;

THAT, should the Honorable Court chose to once again review the events that led to the unfortunate revocation of my previous bail, just days before my designated self-surrender date, and hold a special hearing just devoted to that matter, or in any way consider these events relevant for any further bail hearings, including for the instant bail Motion, I would very much appreciate the Honorable Court ordering to the Pretrial Services to produce the records of the GPS device I was wearing in order to fully clarify the exact location and duration of my short "sandwich eating" and parking event breaks which caused my previous bail revocation when I was returning from visiting my attorney's office in New Jersey;

THAT, as for the instant Motion for Bail Pending Appeal, if acceptable to the Honorable Court, in order to avoid any further misunderstandings regarding the terms of the bail with the Court's Pretrial Services, or any other government agency or entity, the Memorandum of Law, enclosed with this affidavit herein, suggests in great detail the terms of the new Bail the movant respectfully proposes herein;

THAT, upon the review of the suggested terms of the bail, the Honorable Court will certainly notice that the proposed terms are in some aspects more liberal than the previous terms of post-trial bail and that some other proposed terms are simply a practical reflection of the reality that certain actions and filings will inevitably have to be done such as federal and state tax filings for certain corporate entities. Finally, some proposed bail provisions fully reflect my honest avoidance of the immigration law practice and/or any immigration law document preparation business, on my own, even if not considered the practice of law, until this criminal matter is



decided on an appeal. Since the Court's permission to have a higher degree of the freedom of movement within New York and New Jersey, as well as outside employment and the free access to the courts will greatly assist me in uncovering the real truth in this matter - meaning finding further relevant legal documentation including contract or memorandum of understanding between Flowerson Advertising and ADP and Broadridge regarding the advertising procedures (or at least e-mails confirming the existence of the same), locating all or at least most of the missing advertisements and credit card and other payments for advertisements, hiring private investigators, including computer security and network analysts and specialists, etc, all of these for the purposes of new discovery FRCP Rule 33 motions, and other post-conviction collateral attacks on the current judgment of conviction, I believe that it would be in the interests of basic process fairness and the orderly administration of justice that the Honorable Court grants me such liberal bail terms, as respectfully requested;


THAT, the instant motion has not been filed in order to procrastinate or delay any surrender to U.S. Bureau of Prisons, and I am kindly asking the Honorable Court to grant me liberal bail provisions so that I can have a gainful employment and start making restitution payments to the organizations designated as victims in this matter, with the clear understanding that if I fail in my appeal and all other post-conviction efforts, I would still need to serve my sentence anyhow and I am not trying to delay the inevitable serving of the sentence, should that prove to be necessary;

THAT, as for the liberal terms of bail suggested herein and the work on uncovering further evidence in this matter, I am pleased to confirm to the Honorable Court, that thanks to my diligent post-trial search and investigation, I am now in the possession of an e-mail where I, in writing, clearly state to the representatives of ADP (one of the so called corporate victims in this matter) that Flowerson Holdings, or Flowerson Advertising, is my firm (agency). This fact alone disproves the existence of any scheme to defraud on my part in this matter. Moreover, it clearly proves that the representatives of ADP and Broadridge, when stating that they were somehow "shocked" to learn about my ownership or connection to the advertising agency, provided a false testimony first to the U.S. Attorney's Office in New Jersey when meeting for the trial preparation

purposes, and then directly to the Honorable Court and the trial jury. Taken in totality, with other evidence already known to the Honorable Court, such as the testimony of the government's crown witness Steven Weinberg, Esq, that I, indeed, did inform him regarding the change of the advertising agency many years ago, as well as the fact that the executives of the so called corporate victims in this matter ADP and Broadridge, large Fortune 500 corporations with huge legal and human resources departments, in over ten (10) years period never asked a single question about the advertising process, advertising invoices or the actual advertisements they paid for, and proceeded to sign, under the penalty of perjury, legal documents filed with the U.S. Department of Labor certifying that they verified the existence of the advertisements (and were never prosecuted for that), and then afterwards reaped the full benefits of the process by obtaining green cards for their foreign employees and kept their foreign employees working for their firms on a full time and long terms basis, clearly indicates the lack of any scheme to defraud on my part, and also sheds some interesting light on the so called corporate victims in this matter in terms of the most recent "Yates Memo" issued by the U.S. Department of Justice. I am also in the process of collecting additional documentation for the purposes of the filing of new Rule 33 Motion (new discovery), and other post-conviction relief which will address the above referenced issues in more detail, as stated above;

THAT, in order to satisfy both prongs of the statutory provisions regarding bail pending appeal, the issue of the first prong - whether I pose a danger to safety of others and to the community has been largely addressed above, and as for the second prong - concerning substantial questions of law and fact, I provided substantial new facts and information above, and more details are provided in the Memorandum of Law which is enclosed herewith;

Dated : In Danbury, Connecticut, on June 26, 2016

A handwritten signature in black ink, appearing to read 'Marijan Cvjeticanin', written over a horizontal line.

MARIJAN CVJETICANIN